

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on March 18, 2005 at 8:05 A.M., in Room 102 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:

Executive Action: HB 726; HB 113; HB 615; HB 696; HJ
15; HJ 28; HB 49; HB 307; HB 363

EXECUTIVE ACTION ON HB 726

{Tape: 1; Side: A; Approx. Time Counter: 1 - 1.2}

Motion: SEN. JEFF MANGAN, SD 12, moved that HB 726 BE CONCURRED IN.

Motion: SEN. MANGAN moved the approval of amendment #HB072601.av1.

EXHIBIT(jus60a01)

Discussion: SEN. MANGAN said the HB 726 originally limited contracting to private and nonprivate Montana corporations in conjunction with the Prerelease Program which limited day reporting to five entities in the state. There are some other corporations that may potentially discuss working with the Department of Corrections to offer more options. HB072601.av1 strikes "private, nonprivate" and inserts "Montana corporations".

SEN. JERRY O'NEIL, SD 3, asked if HB 726 needed language to explain why the contracts are with Montana corporations and not corporations in general. SEN. JIM SHOCKLEY, SD 45, said the reason for the language "Montana corporation" is because the sponsors of the amendment and the bill agreed that Montana is not in need of further Corrections Corporations of America (CCA) in the state.

Vote: SEN. MANGAN'S motion to approve amendment #HB072601.av1 carried on an 11 to 1 voice vote. SENATOR O'NEIL voted nay.

Motion: SEN. MANGAN moved that SB 726 BE CONCURRED IN AS AMENDED. Motion carried unanimously by voice vote. SEN. SHOCKLEY will carry the bill.

EXECUTIVE ACTION ON HB 113

{Tape: 1; Side: A; Approx. Time Counter: 7.9 - 8.9}

Motion/Vote: SEN. LYNDA MOSS, SD 26, moved that HB 113 BE CONCURRED IN. Motion carried unanimously by voice vote. SEN. SHOCKLEY will carry the bill.

EXECUTIVE ACTION ON HB 615

{Tape: 1; Side: A; Approx. Time Counter: 8.9 - 9.7}

Motion: SEN. DAN MCGEE, SD 29, moved that HB 615 BE CONCURRED IN.

Motion: SEN. SHOCKLEY moved the approval of amendment #HB061502.avl.

EXHIBIT(jus60a02)

Discussion: SEN. SHOCKLEY said that HB061501.avl does away with the environmental crimes investigation and prosecution office concept and preserves the idea that the request to get the Department of Justice (DOJ) involved is at the behest of the Department of Environmental Quality (DEQ). He added that **REP. CHRISTOPHER HARRIS, HD 66**, sponsor of HB 615, is not in favor of the amendment because he liked the language "office". SEN. SHOCKLEY said that he was in favor of enforcing environmental laws, but that they did not need to be made more officious than they needed to be.

SEN. JON ELLINGSON, SD 49, said there should not be a lot of heartburn in HB 615 because there are no additional FTEs in the office. They will be using existing prosecutors.

Vote: SEN. SHOCKLEY'S motion to approve amendment #HB061501.avl carried on an 8 to 4 voice vote with SENATORS MOSS, PEASE, WHEAT, and LASLOVICH voted nay.

Motion: SEN. MCGEE moved that HB 615 BE CONCURRED IN AS AMENDED.

Discussion: SEN. GARY PERRY, SD 35, asked if HB 615 is giving the DOJ the authority to investigate and prosecute known environmental crimes or alleged environmental crimes. SEN. MICHAEL WHEAT, SD 32, said that the investigation portion relates to an allegation of an environmental crime because the language "investigating" encompasses that. If the allegation is determined to be an environmental crime, they prosecute it.

SEN. AUBYN CURTISS, SD 1, asked if "environmental crime" was defined in statute. Valencia Lane, Staff Attorney, Legislative Services Division (LSD), was unsure. However, she believed that it meant any crime that is provided for in Title 75.

Motion: SEN. MCGEE moved a CONCEPTUAL AMENDMENT to strike "environmental crimes" and insert references to violations of

provisions of Title 75. Motion carried on an 11 to 1 voice vote.
SEN. WHEAT voted nay.

Motion: SEN. MCGEE moved that HB 651 BE CONCURRED IN AS AMENDED.
Motion carried on an 11 to 1 voice vote. SEN. CURTISS voted nay.
SEN. WHEAT will carry the bill.

EXECUTIVE ACTION ON HB 696

{Tape: 1; Side: B; Approx. Time Counter: 6.1 - 6.2}

Motion: SEN. LASLOVICH moved that HB 696 BE CONCURRED IN.

Discussion: SEN. JERRY O'NEIL, SD 3, opposed HB 696 because it put an undue burden on foster parents to maintain a child's religious heritage. SEN. WHEAT felt that the bill provided for sufficient discretion. SEN. SHOCKLEY said that the language "whenever appropriate" is not much discretion, and "appropriate" means that whenever a child has a particular ethnic or cultural religious heritage, the child should be placed in a place with the same ethnic or cultural religious background.

Ms. Lane reminded the Committee that HB 696 does not require adoptive families to do anything onerous in terms of maintaining the child's religious heritage. It is merely a statement of purpose for the Youth Court.

SEN. MCGEE asked if HB 696 would require the Pine Hills Youth Correctional Facility to provide programs for ethnic, cultural, and religious heritages. Ms. Lane said that HB 696 does not specifically say that. If the Legislature wanted to say that, it would have to amend statutes related to Pine Hills to ensure that the programs would be provided. HB 696 is a purpose statement.

Motion: SEN. MCGEE moved to amend HB 696 by reinserting "provides" on line 19 and striking "provides" on lines 20, 21, and 23 and "ensures" on line 24.

Discussion: SEN. SHOCKLEY said that the unneeded language is "appropriate". He felt that the language should be "whenever reasonably available".

Vote: SEN. MCGEE'S motion to amend HB 696 carried unanimously by voice vote. SEN. MANGAN voted aye by proxy.

Motion: SEN. MCGEE moved that HB 696 BE CONCURRED IN AS AMENDED.

Motion: SEN. SHOCKLEY moved to further amend HB 696 by striking "appropriate" on line 25 and insert "reasonably available" after "whenever".

Discussion: Ms. Lane said that it does not make sense to say that a heritage is available. The language should be whenever "possible" or "when means are available".

{Tape: 2; Side: A; Approx. Time Counter: 0.3 - 15.5}

Discussion: SEN. PERRY felt that the amendment language went too far and that existing language was more than appropriate.

Vote: SEN. SHOCKLEY'S amendment failed on a 4 to 8 voice vote. SENATORS O'NEIL, SHOCKLEY, ELLINGSON, and CURTISS voted aye. SEN. MANGAN voted nay by proxy.

Discussion: Steve Gibson, Administrator, Youth Services, Department of Corrections, said that the Department currently provides for all heritages; i.e., sweat lodges for Native American youth and special diets for medical purposes. He does not see HB 696 as being a problem. The intent has been clarified for the Youth Court, and it will not be a huge financial burden on state facilities because all religious programming that is nondenominational is contracted. Any youth in the system with a bonafide religious and cultural need is met.

Vote: SEN. MCGEE'S motion that HB 696 BE CONCURRED IN AS AMENDED passed on an 11 to 1 voice vote. SEN. O'NEIL voted nay. SEN. MANGAN voted aye by proxy. SEN. GERALD PEASE, SD 21, will carry the bill.

EXECUTIVE ACTION ON HJ 15

{Tape: 2; Side: A; Approx. Time Counter: 15.5 - 21.5}

Motion: SEN. CROMLEY moved that HJ 15 BE CONCURRED IN.

Discussion: SEN. SHOCKLEY said that there is a bill in House Appropriations to study sentencing that will be funded. If HJ 15 is passed it is very unlikely that it will be funded.

SEN. PEASE said that HJ 15 was an attempt to keep the previous sentencing study going. The only difference between HJ 15 and the bill in the House is that HJ 15 has a focus on minorities. He requested further time to study the two bills.

SEN. CROMLEY withdrew his motion. Executive Action was postponed.

EXECUTIVE ACTION ON HJ 28

{Tape: 2; Side: A; Approx. Time Counter: 21.5 - 29.6}

Motion: SEN. CURTISS moved that HJ 28 BE CONCURRED IN.

Discussion: SEN. CURTISS said that Flathead County is trying to ascertain how many easements are on record. She brought forth a resolution during the 2003 Session to have an audit performed because there is no continuity in the reporting or availability of information in the same format. The state needs to get a handle on the number of easements for tax implications relative to the counties.

SEN. SHOCKLEY said that the real estate easement laws are very well settled, and he could see no reason to mess with them. He felt HJ 28 was not needed. SEN. ELLINGSON agreed, stating that if a person buys property, the person always gets title insurance. The title insurance gives insurance against all reported interests. If an easement is not recorded, the person has title to the property and the title is either not subject to the easement or the person would have action against the title insurance company if the easement was recorded and not disclosed.

Motion/Vote: SEN. CROMLEY moved to amend the Title of HJ 28-- strike "filing" and insert "recording" on line 6. Motion carried unanimously by voice vote.

Motion: SEN. WHEAT moved that HJ 28 BE CONCURRED IN AS AMENDED.

{Tape: 2; Side: B; Approx. Time Counter: 1.9 - 10.3}

Discussion: SEN. ELLINGSON asked if there is a problem with unrecorded easements. SEN. CROMLEY said that there seem to be cases before the Supreme Court every week related to easements. He was unsure whether HJ 28 would deal with all easements because its emphasis is on utility easements. He felt there must be some problems with regard to recognition of easements that should be addressed.

SEN. SHOCKLEY said that every time a county subdivides, easement problems are created. A study is not going to do any good. The law is settled. If the easement laws are changed, it would be counterproductive.

Vote: SEN. WHEAT'S motion failed on a 3 to 9 voice vote. SENATORS CURTISS, CROMLEY, and O'NEIL voted aye. SEN. MANGAN voted aye by proxy.

Motion/Vote: SEN. ELLINGSON moved that HJ 28 BE TABLED. Motion carried on an 8 to 4 voice vote with SENATORS CROMLEY, CURTISS, MANGAN, and O'NEIL voting nay. SEN. MANGAN voted nay by proxy.

EXECUTIVE ACTION ON HB 49

{Tape: 2; Side: B; Approx. Time Counter: 10.3 - 20.6}

Motion: SEN. CROMLEY moved that HB 49 BE CONCURRED IN.

Motion: SEN. CROMLEY moved the approval of amendment #HB49.02 as prepared by Brenda Thompson, Department of Corrections.

EXHIBIT (jus60a03)

Discussion: Ms. Thompson said that the amendment includes law enforcement as an entity that can receive notice of an address change for any offender who has to register as a sexual or violent offender.

SEN. ELLINGSON asked if the offender satisfied his or her obligation by registering with any one of the three entities; i.e., the Department, the chief of police of the municipality, or sheriff of the county from which the offender is moving. Ms. Thompson said that the purpose of the amendment is to deal only with offenders who are initially registered under 46-23-504(1)(b), MCA. These are offenders who are in prison. When they are in prison, there is an obligation that they register or start the registration process 10 days before they are released. The offender also has the obligation to notify law enforcement in the new jurisdiction where they are moving to. SEN. ELLINGSON said if existing statute already requires that the offender notify the place where the offender is moving, the language should just say that the offender notify the Department and the chief or police of the municipality from which they are leaving, rather than giving the offender the options. Ms. Thompson said that the Department would not be opposed to the language.

Motion: SEN. CROMLEY moved to amend #HB49.02 by striking "or" and inserting "and" following department on Page 3, line 27, Motion carried on a unanimous voice vote. SENATORS MANGAN and MCGEE voted aye by proxy.

Motion: SEN. WHEAT moved that HB 49 BE CONCURRED IN AS AMENDED.

{Tape: 2; Side: B; Approx. Time Counter: 20.6 - 26.6}

Motion: SEN. PERRY moved to further amend HB 49 by striking "who" on line 7 of the Title and inserting "with whom". Motion carried unanimously by voice vote. SENATORS MANGAN and MCGEE voted aye by proxy.

Vote: SEN. WHEAT'S motion that HB 49 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. SENATORS MANGAN and MCGEE voted aye by proxy. SEN. PERRY will carry the bill.

EXECUTIVE ACTION ON HB 307

{Tape: 3; Side: A; Approx. Time Counter: 3.5 - 17.2}

Motion: SEN. SHOCKLEY moved that HB 307 BE CONCURRED IN.

Motion: SEN. SHOCKLEY moved the approval of amendment #HB030701.av1.

EXHIBIT(jus60a04)

Discussion: SEN. SHOCKLEY said that HB030701.av1 leaves the provision that makes money laundering illegal and deletes the draconian provisions that relate to the property, particularly in regard to third parties. If someone forfeits the property and there is another person with an interest in the property, it will be handled as any other civil matter; i.e., they will have to clear title to the property like anyone else would.

Vote: SEN. SHOCKLEY'S motion to approve amendment #HB030701.av1 carried on a unanimous voice vote. SEN. MCGEE voted aye by proxy.

Motion: SEN. O'NEIL moved the approval of amendment #HB030701.apm.

EXHIBIT(jus60a05)

Discussion: SEN. O'NEIL said that HB030701.apm clarifies that the money laundering activity must be unlawful in the state in which the activity occurred or the United States.

SEN. CROMLEY felt that the amendment was good. He said that the way HB 307 currently reads, if a person wins a car or \$100,000 in

Nevada, it would be unlawful under the laws of Montana. **SEN. O'NEIL'S** amendment would not make it unlawful.

Vote: **SEN. O'NEIL'S** motion to approve amendment #HB030701.apm carried unanimously by voice vote. **SEN. MCGEE** voted aye by proxy.

Motion/Vote: **SEN. SHOCKLEY** moved that HB 307 BE CONCURRED IN AS AMENDED. Motion carried on an 11 to 1 voice vote with **SEN. CROMLEY** voting nay. **SEN. MCGEE** voted aye by proxy. **SEN. SHOCKLEY** will carry the bill.

EXECUTIVE ACTION ON HB 363

{Tape: 3; Side: A; Approx. Time Counter: 17.3 - 21.4}

Motion: **SEN. MANGAN** moved that HB 363 BE CONCURRED IN.

Motion: **SEN. SHOCKLEY** moved the approval of amendment #HB036301.av1.

EXHIBIT(jus60a06)

Discussion: **Ms. Lane** said that the amendment incorporates **SEN. KELLY GEBHARDT'S, SD 23**, provision from SB 172 which would have amended the same section of law. This provision applies to emergency responders.

Vote: **SEN. SHOCKLEY'S** motion to approve amendment #HB036301.av1 carried unanimously by voice vote. **SEN. MCGEE** vote aye by proxy.

{Tape: 3; Side: A; Approx. Time Counter: 21.4 - 25.6}

Motion: **SEN. MANGAN** moved that HB 363 BE CONCURRED IN AS AMENDED.

Discussion: **SEN. PERRY** said that HB 363 applies only to a person who is incarcerated or a minor while the youth is detained. He asked if that was the intent of HB 363 and whether the word "incarcerated" applied to health care facilities. **Ms. Lane** said that existing law only applied to law enforcement officers in correctional institutions and facilities. HB 363, as originally written, applied to health care providers defined in 50-5-504, MCA, which includes nurses, and extends the provision to all health care providers, including those providing emergency services, and would not have been restricted to a correctional facility. The House did not like the expansion and simply plugged health care providers into existing law, which now applies only

to persons who are incarcerated or arrested or transported between arrests.

SEN. CROMLEY asked if the offense could be committed by a person who is incarcerated or being transported among law enforcement and health care personnel or can it be committed by any person toward an emergency responder. **SEN. PERRY** said that he wanted to ensure the protection of those who work in health care facilities.

Vote: SEN. MANGAN'S motion that HB 363 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. SEN. MCGEE voted aye by proxy. SEN. ELLINGSON will carry the bill.

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

LOIS O'CONNOR, Transcriber

MW/mp

Additional Exhibits:

EXHIBIT ([jus60aad0.PDF](#))